

(c) *Revisions to six Program-wide guidance memoranda.* The Secretary of the Army may, whenever the Secretary believes it is necessary, and in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the South Florida Water Management District, the Florida Department of Environmental Protection, other Federal, State, and local agencies, and the public, revise guidance memoranda that have been completed. Such revisions shall be developed and approved consistent with the provisions of paragraph (b) of this section. Revisions to the six guidance memoranda described in paragraph (a) of this section shall be made following the same concurrence process as in paragraph (b)(5) of this section.

(d) *Other guidance.* Nothing in this part shall be considered or construed to preclude the ability of the Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors from issuing other guidance or policy to assist in implementing the Plan. Any such guidance or policy shall be consistent with applicable law, policy, and regulations.

#### **§ 385.6 Review of programmatic regulations.**

(a) The Secretary of the Army shall review, and if necessary revise, the regulations of this part at least every five years. In addition, the Secretary of the Army may review and revise the regulations of this part whenever the Secretary believes that such review and revision is necessary to attain the goals and purposes of the Plan. The Secretary of the Army shall place appropriate notice in the FEDERAL REGISTER upon initiating review of the regulations of this part.

(b) Upon completing the review of the regulations of this part, the Secretary shall promulgate any revisions to the regulations after notice and opportunity for public comment in accordance with applicable law, with the concurrence of the Secretary of the Interior and the Governor, and in consultation with the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of

Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies.

(c) Within 180 days after being provided with the final revisions to the programmatic regulations of this part, or such shorter period that the Secretary of the Interior and Governor may agree to, the Secretary of the Interior and the Governor shall provide the Secretary of the Army with a written statement of concurrence or non-concurrence with the revisions. A failure to provide a written statement of concurrence or non-concurrence within such time frame shall be deemed as meeting the concurrency process of paragraph (b) of this section. A copy of any concurrency or nonconcurrency statements shall be made a part of the administrative record and referenced in the final revised programmatic regulations. Any non-concurrency statement shall specifically detail the reason or reasons for the non-concurrence.

#### **§ 385.7 Concurrency statements.**

The administrative record of the programmatic regulations in this part contains a copy of the concurrency statements by the Secretary of the Interior and the Governor to the Secretary of the Army. The concurrency statements can be obtained from the Army Corps of Engineers, Jacksonville District, 701 San Marco Blvd., Jacksonville, Florida 32207, or by accessing the programmatic regulations Web page at: [http://www.evergladesplan.org/pm/progr\\_regs\\_final\\_rule.cfm](http://www.evergladesplan.org/pm/progr_regs_final_rule.cfm).

### **Subpart B—Program Goals and Responsibilities**

#### **§ 385.8 Goals and purposes of the Comprehensive Everglades Restoration Plan.**

(a) The Comprehensive Everglades Restoration Plan (CERP) is a framework for modifications and operational changes to the Central and Southern Florida Project. The overarching objective of the Plan is the restoration, preservation, and protection of the South Florida ecosystem while providing for other water-related needs of the region, including water supply and flood protection.

(b) The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, implement the Plan, as authorized by Congress, to ensure the protection of water quality in, the reduction of the loss of fresh water from, and the improvement of the environment of the South Florida ecosystem and to achieve and maintain the benefits to the natural system and human environment described in the Plan, and required pursuant to section 601 of WRDA 2000, for as long as the project is authorized.

(c) The goal of the Plan is to restore, preserve, and protect the South Florida ecosystem while providing for other water-related needs of the region. The Plan is designed to accomplish this by providing the quantity, quality, timing, and distribution of water necessary to achieve and sustain those essential hydrological and biological characteristics that defined the undisturbed South Florida ecosystem. As authorized by Congress, the restored South Florida ecosystem will be significantly healthier than the current system; however it will not completely replicate the undisturbed South Florida ecosystem and some areas may more closely replicate the undisturbed ecosystem than others. Initial modeling showed that most of the water generated by the Plan would go to the natural system in order to attain restoration goals, and the remainder of the water would go for use in the human environment. The Corps of Engineers, the South Florida Water Management District, and other non-Federal sponsors shall ensure that Project Implementation Reports identify the appropriate quantity, timing, and distribution of water to be dedicated and managed for the natural system that is necessary to meet the restoration goals of the Plan. In accordance with the “Comprehensive Everglades Restoration Plan Assurance of Project Benefits Agreement,” dated January 9, 2002 pur-

suant to section 601(h)(2) of WRDA 2000, the South Florida Water Management District or the Florida Department of Environmental Protection shall make sufficient reservations of water for the natural system under State law in accordance with the Project Implementation Report for that project and consistent with the Plan before water made available by a project is permitted for a consumptive use or otherwise made unavailable.

(d) The Corps of Engineers and non-Federal sponsors shall implement the Plan in a manner to continuously improve the expected performance level of the Plan based upon new information resulting from changed or unforeseen circumstances, new scientific and technical information, new or updated modeling; information developed through the adaptive assessment principles contained in the Plan; and future authorized changes to the Plan integrated into the implementation of the Plan.

#### § 385.9 Implementation principles.

The Corps of Engineers and the South Florida Water Management District and other non-Federal sponsors shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, conduct activities, including program-level activities, necessary to implement the Plan. Such activities shall be conducted as part of an integrated implementation program, in accordance with this part, and based on the following principles:

(a) Individual projects shall be formulated, evaluated, and justified based on their ability to contribute to the goals and purposes of the Plan and on their ability to provide benefits that justify costs on a next-added increment basis.

(b) Interim goals shall be established in accordance with § 385.38 to provide a means for evaluating restoration success of the Plan at specific time intervals during implementation. Interim